

MONTANA LEGISLATIVE HISTORY

Chapter 522 19 91

Bill H _____ S 158 Original bill & history ✓ C

H. Committee on Agriculture

Hearing Date(s) Feb 15 ✓ C

Feb 18 ✓ C

_____ C

_____ C

Date Out Feb 18 ✓ C

S. Committee on Agriculture

Hearing Date(s) Jan 30 ✓ C

Feb 01 ✓ C

Feb _____ C

_____ C

Feb 02 ✓ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

4/20 RETURNED TO SENATE
 TRANSMITTED TO GOVERNOR FOR RECONSIDERATION
 4/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 591

EFFECTIVE DATE: 10/01/91

SB 158 INTRODUCED BY JERGESON, ET AL.

ESTABLISH SYSTEM FOR TRANSFER OF
 FARM IMPLEMENT DEALERSHIPS

1/21	INTRODUCED		
1/22	REFERRED TO BUSINESS & INDUSTRY		
1/22	FIRST READING		
1/23	REREFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/30	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	49	0
2/05	3RD READING PASSED	49	0

	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/07	REREFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/15	HEARING		
2/19	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	73	22
3/11	3RD READING CONCURRED	79	19

RETURNED TO SENATE
 3/16 SIGNED BY PRESIDENT
 3/18 SIGNED BY SPEAKER
 3/18 TRANSMITTED TO GOVERNOR

3/23	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
3/28	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	49	0
4/01	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	48	0
	TRANSMITTED TO HOUSE		
4/09	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	81	15

RETURNED TO SENATE
 4/17 SIGNED BY PRESIDENT
 4/18 SIGNED BY SPEAKER
 4/18 TRANSMITTED TO GOVERNOR
 4/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 522

EFFECTIVE DATE: 4/22/91

SB 159 INTRODUCED BY MANNING

EXEMPT GOLF CARTS FROM FEE IN LIEU OF TAX

1/21	INTRODUCED		
1/22	FISCAL NOTE REQUESTED		
1/22	REFERRED TO TAXATION		
1/22	FIRST READING		
1/26	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
1/30	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
2/02	2ND READING PASSED	45	1
2/04	3RD READING PASSED	45	4

TRANSMITTED TO HOUSE
 2/05 FIRST READING
 2/05 REFERRED TO TAXATION
 2/19 HEARING

SENATE BILL NO. 158

INTRODUCED BY JERGESON, L. NELSON, WILLIAMS

IN THE SENATE

JANUARY 22, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

 FIRST READING.

JANUARY 23, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FEBRUARY 2, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 4, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 5, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 5, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 6, 1991 FIRST READING.

FEBRUARY 7, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 8, 1991 SECOND READING, CONCURRED IN.

MARCH 11, 1991 THIRD READING, CONCURRED IN.
AYES, 79; NOES, 19.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 12, 1991 RECEIVED FROM HOUSE.

MARCH 16, 1991
SENT TO ENROLLING.
REPORTED CORRECTLY ENROLLED.
SIGNED BY PRESIDENT.
SIGNED BY SPEAKER.

MARCH 18, 1991
DELIVERED TO GOVERNOR.

MARCH 22, 1991
RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

MARCH 28, 1991
SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 1, 1991
THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 9, 1991
SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 11, 1991
SENT TO ENROLLING.
REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *158*
 2 INTRODUCED BY *Jergeson, Nelson, Wilkin*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM
 5 FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED
 6 FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS
 7 AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING
 8 A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP
 9 OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A
 10 DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR
 11 REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET
 12 COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR
 13 DAMAGES AND PENALTIES; AND AMENDING SECTIONS 30-11-702,
 14 30-11-712, AND 30-11-801, MCA."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 30-11-801, MCA, is amended to read:

18 **"30-11-801. Definitions.** As used in this part, the
 19 following definitions apply:

20 (1) "Community of interest" means a continuing
 21 financial interest that the grantor and grantee have in
 22 common.

23 (2) "Dealer" means a person who is a grantee of a farm
 24 implements dealership situated in this state.

25 (3) "Dealership" means a contract or agreement,

1 expressed or implied, whether oral or written, including a
 2 franchise as defined in 61-4-201, by which a person is
 3 granted the right to sell or distribute farm implements, in
 4 which there is a community of interest in the business of
 5 offering, selling, or distributing farm implements.

6 (4) "Department" means the department of commerce
 7 established in 2-15-1801.

8 (5) (a) "Designated family member" means the spouse,
 9 child, grandchild, parent, brother, or sister of a dealer
 10 who:

11 (i) in the case of a deceased dealer:

12 (A) is entitled to inherit the dealer's ownership
 13 interest in the dealership under the terms of the dealer's
 14 will;

15 (B) has been designated in writing by a deceased dealer
 16 to succeed him in the dealership; or

17 (C) is entitled to inherit the dealer's ownership
 18 interest in the dealership under the laws of intestate
 19 succession of this state; or

20 (ii) in the case of an incapacitated dealer, has been
 21 appointed by a court as the legal representative of the
 22 dealer's property.

23 (b) The term includes the appointed and qualified
 24 personal representative and the testamentary trustee of a
 25 deceased dealer.

1 (6) "Designated successor" means a person who, in the
 2 case of a retiring dealer, is designated in writing by the
 3 retiring dealer to succeed him in the dealership.

4 ~~†4†~~(7) "Farm implement" means any vehicle, machine, or
 5 attachment designed or adapted and used exclusively for
 6 agricultural operations and only incidentally operated or
 7 used on the highways.

8 ~~†5†~~(8) (a) "Good cause", when used in 30-11-801 through
 9 30-11-803 and 30-11-811, means:

10 ~~†a†~~(i) failure by a dealer to comply substantially with
 11 essential and reasonable requirements imposed upon him by
 12 the grantor or sought to be imposed by the grantor, which
 13 requirements are not discriminatory as compared with
 14 requirements imposed on other similarly situated dealers
 15 either by the terms of the requirements or in the manner of
 16 their enforcement; or

17 ~~†b†~~(ii) bad faith by the dealer in carrying out the
 18 terms of the dealership.

19 (b) Good cause, when used in [sections 2 through 9],
 20 means a showing that succession to a dealership would be
 21 detrimental to the public interest or to the representation
 22 of the grantor.

23 ~~†6†~~(9) "Grantor" means a person who grants a
 24 dealership.

25 ~~†7†~~(10) "Person" means any individual, partnership,

1 association, corporation, or other entity."

2 NEW SECTION. Section 2. Right of designated family
 3 member or designated successor to succeed in dealership
 4 ownership. (1) A designated family member or designated
 5 successor may succeed the dealer in the ownership or
 6 operation of the dealership under the existing franchise or
 7 distribution agreement:

8 (a) if, within 120 days of the dealer's death,
 9 incapacity, or retirement, he gives the grantor written
 10 notice of his intention to do so; and

11 (b) unless there exists good cause for refusal to honor
 12 the succession on the part of the grantor.

13 (2) The grantor may request, and the designated family
 14 member or designated successor shall provide, upon request,
 15 personal and financial data that is reasonably necessary to
 16 determine whether the succession should be honored.

17 NEW SECTION. Section 3. Refusal to honor succession to
 18 ownership -- notice required. (1) If a grantor believes that
 19 good cause exists for refusing to honor the succession to
 20 the ownership and operation of a dealership by a designated
 21 family member or by a designated successor under the
 22 existing franchise agreement, the grantor may, within 30
 23 days of receipt of notice of the designated family member's
 24 or designated successor's intent to succeed the dealer in
 25 the ownership and operation of the dealership, serve upon

the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [section 4], the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

NEW SECTION. Section 4. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period provided for in [section 3], file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

NEW SECTION. Section 5. Written designation of succession unaffected. [Sections 2 through 9] do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

NEW SECTION. Section 6. Illegal cancellation of dealership based on natural disaster. A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area or some other circumstance beyond the dealer's control.

NEW SECTION. Section 7. Repurchase of farm implement

dealership inventory upon cancellation of dealership. (1) If a dealer enters into a written dealership contract or agreement with a grantor and the grantor cancels the dealership, the grantor shall, at the dealer's request, pay to the dealer or credit to the dealer's account, if the dealer has outstanding any sums owing the grantor, an amount equal to 100% of the net cost of all new, unused, undamaged, and complete inventory items, including repair parts, held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the dealer's account of the sum required in subsection (1) must be made upon return of the inventory items to the grantor and upon payment by the dealer of any shipping charges necessitated by the return of the items. Title to the inventory items passes to the grantor upon making the payment or allowance.

NEW SECTION. Section 8. Violation -- penalty. A person violating the provisions of [sections 2 through 9] shall upon conviction be fined an amount not to exceed \$5,000.

NEW SECTION. Section 9. Civil damages. A dealer suffering pecuniary loss due to a violation of [sections 2 through 9] who prevails in a civil action for the loss is entitled to damages equal to three times the pecuniary loss, together with court costs and reasonable attorney fees.

Section 10. Section 30-11-702, MCA, is amended to read:

30-11-702. Repurchase of inventory items upon

cancellation of dealership or distribution contract. (1) If Except as provided in [section 7], if a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the dealer at the time of cancellation.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by

1 the wholesaler at the time of cancellation; and

2 (b) 85% of the current net price of each repair part
3 carried on the most recent price list or catalog provided by
4 the manufacturer or distributor and held by the wholesaler
5 at the time of cancellation.

6 (3) Payment or allowance of credit to the retailer's or
7 wholesaler's account of the sum required in subsection (1)
8 or (2) must be made upon return of the inventory items to
9 the wholesaler, manufacturer, or distributor. Title to such
10 inventory items passes to the wholesaler, manufacturer, or
11 distributor upon making such payment."

12 **Section 11.** Section 30-11-712, MCA, is amended to read:

13 "30-11-712. Civil liability. If any wholesaler,
14 manufacturer, or distributor fails or refuses to repurchase
15 any inventory as required by 30-11-702 and [section 7(1)],
16 the wholesaler, manufacturer, or distributor is liable in a
17 civil action for 100% of the current net price of the
18 inventory, plus any freight charges paid by the retailer or
19 wholesaler, the retailer's or wholesaler's attorney fees,
20 and court costs."

21 NEW SECTION. **Section 12. Severability.** If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. **Section 13. Codification instruction.**
3 [Sections 2 through 9] are intended to be codified as an
4 integral part of Title 30, chapter 11, part 8, and the
5 provisions of Title 30, chapter 11, part 8, apply to
6 [sections 2 through 9].

-End-

Senator Devlin asked what North and South Dakota do about this problem. Mr. Gingery informed that those states do not have a comprehensive program at this time, but they want to set up something similar to this also.

Senator Williams expressed concern about people "turning in" their neighbor. Senator Weeding stated their intent is not to get people in trouble, but rather to get the wastes out of their barnyards or off their shelves.

Senator Devlin asked for clarification regarding giving the name of the county and the substance on the questionnaire. Senator Weeding stated the intent of that requirement is so they will know "where and what" so that some sort of a pickup system can be devised.

In regard to the confidentiality concern, Senator Devlin asked how the information would be destroyed if the program is not set up. Mr. Gingery stated that would have to be dealt with based upon the law. He admitted it would be very difficult to keep all the information confidential.

Closing by Sponsor:

Senator Weeding stated that this subject is something that must be dealt with, and he feels this is one way to develop an orderly process. He urged them to support SB 161.

HEARING ON SENATE BILL 158

Presentation and Opening Statement by Sponsor:

Senator Greg Jergeson, District 8, stated for many years he had been concerned about the problems of the small towns as they declined in population, declined in economic activity, and suffered losses of implement dealerships. Every time a dealership has been lost, he has heard conversation among farmers and ranchers indicating that one of the reasons the dealership was not passed on to someone else on either the death or retirement of a dealer was that the manufacturers were not interested in seeing these small dealerships transferred. It was in the manufacturers' interest to see just a few dealers with whom they had to deal on a regular basis. It was also indicated that some dealers worked beyond the years they would have liked to work because the manufacturer would let the dealership survive only as long as the present dealer was in business. However, if he was to retire, the manufacturer would be unwilling to let someone else take over that dealership. Senator Jergeson stated his reason for requesting the drafting of this bill was to make it possible for a person who has worked his full life in a dealership to be able to enjoy the fruits of retirement without feeling obliged to stay in business so that their community would maintain a dealership. This bill would provide that a dealer

could name a successor; that the manufacturer would have to have good cause why they would deny the approval of the franchise being transferred to the successor named by the dealer. Senator Jergeson stated he was contacted by Charles Brooks of the Hardware Implement Dealers Association advising that they had some other concerns which have been suggested as amendments to the bill. Among those concerns are the amount of repayment to a dealer for the inventory in the event the dealership is canceled, and also that the inventory would be 100% and the manufacturer would pay freight to return inventory. In confirmation of his concern about the trend toward losing dealers in small towns, Senator Jergeson informed that the latest issue of "Successful Farming" contains an article about consolidation in the equipment manufacturing industry. It appears to be a worldwide trend and there is pressure on U.S. companies to reduce the number of dealers in the field, according to the article. Senator Jergeson expressed the opinion that farmers believe that there are not enough dealers in close proximity rather than too many. Traveling up to 300 miles for a part for equipment causes major problems for a producer.

Proponents' Testimony:

CHARLES BROOKS, Managing Director of the Montana Hardware and Implement Association, stated that he was offering some amendments to SB 158 (Exhibit #2). He reviewed the amendments for the committee. Mr. Brooks stated it is his belief the implement industry is going to end up with large regional implement dealers with a few satellite branches. They feel that is the wrong approach for the state of Montana in merchandising farm equipment and in serving farmers and ranchers. Mr. Brooks furnished written testimony to the committee (Exhibit #3). He urged passage of SB 158.

KEN MUNSON, Shelby, Montana, advised he has been involved in farm implement business for 13 years, and is speaking in support of SB 158. He stated he has been associated with major manufacturers as a dealer and has a good working relationship with them. He has also established a very good customer base. Up until four years ago he was never on a sales quota with any major manufacturer, when one manufacturer set their goal at \$50,000 and then kept raising it. At present their goal is set at 4 four-wheel drive units for about \$250,000 to \$300,000 volume. He has been told that there is only going to be room for one dealership in his sales area, and he was not going to be that dealer. He was told among the qualifications to remain a dealer was to have a communications system with the manufacturer at a cost of about \$3,500 plus a monthly charge. He feels that is unnecessary because they only have correspondence with the manufacturer about four to six times a month. They are expected to purchase about \$5,000 more worth of special tools, some of which are for tractors which they will never sell in their sales area. They were told to have plans for new facilities submitted in 1991, and in place in 1992. As the 1980's were mostly drought

years, it takes farmers two or more good years to make up for one drought year. Purchasing new equipment is the last thing a farmer can do. This makes it very difficult, if not impossible, to meet the quotas set by the manufacturer. This proposed legislation would help them recover a portion of their loss. He asked the committee to give SB 158 a do pass recommendation.

CLIFF HANSEN, Wolf Point, stated he is currently an operator of an implement business started by his father in 1928. He stated he is here in support of SB 158. He stated that in the past few years they have been required to purchase new signs, new computer system, numerous tools and other equipment to operate their business to satisfy their contract. Many of these things are duplicates; the sign was sufficient as they had been there enough years so that everyone knew where they were located. They invested approximately \$34,000 in computer equipment and have now been told it is practically valueless. They received a cancellation two years ago on their franchise, and the only reason given for the cancellation was that they did not meet their sales quota. No consideration was given to the drought years. He feels this is unfair. He stated that although this bill will probably not pertain to him, he is here because of his respect for his customers and his fellow dealers who will need more help down the road. He urged support of SB 158.

BOB POTTER, Glasgow, stated he has been in the implement business for 19 years, and is appearing to ask support of SB 158. He stated he has been associated with a major manufacturer of four-wheel drive tractors all of those years. He stated his relationship with the manufacturer has been good until recently. When he first became a dealer, there were no sales quotas or stipulations. Four years ago they put on a sales quota of \$50,000. Now his quota is 40% of market share or three tractors. This could amount to \$250,000 to \$350,000 depending on the size of the tractors sold. There are four dealers in his town and five major lines of tractors sold there, so he feels it is unfair to have to get a 40% market share. They have recently been advised by representatives of the company that they only want one dealer in the sales area; right now there are two and he has been asked to terminate his contract. It is hard for him to comply with requirements placed on him by the company. An increase from \$50,000 to four tractors is a substantial increase. Other requirements from the company include signs, schooling, tooling, computer, which are very hard to meet. Drought conditions and other factors have made it very difficult for him to sell tractors. If this bill passes, it will help defray some of the costs of the loss of business. He believes that since they are required to stock parts, the manufacturers should help defray some of the costs.

LYNN COBURN, owner of Pape Equipment in Billings, stated he is also the president of Montana Hardware and Implement Association, and is appearing to urge support of SB 158. After 15 years in the implement business, he has witnessed a major move

by the manufacturers to consolidate dealerships at the expense of dealers and the farmer and rancher. The industry is going to mega dealers who will be multi franchise selling several lines, and located in metropolitan areas. This eliminates the dealers in the small towns. The farmers will have to pay more freight, and drive hundreds of miles to get parts. He further stated he started business in 1976, and since that time they have lost 13 dealers in the city of Billings. In a 90 to 100 mile surrounding radius, they have lost 33 implement dealers that have gone broke, changed hands or canceled. He stated about a year ago he was notified by one of the major manufacturers that his contract was canceled. The manufacturer let it be known that they were being canceled so their business dropped almost immediately. However, on the 90th day he received a registered letter that rescinded their order. Mr. Coburn believes that it will only be a matter of time before they will find another reason to cancel on that line. He stated that they have invested over \$40,000 in a computer system which the manufacturer insisted upon; they spent \$15,000 on building a bigger parts department to handle their line, and have invested approximately \$15,000 in specialty shop tools to service and repair their brand of equipment, plus another \$5,000 in service schools and meetings to handle this line. He stated his son works in the business with him and plans to take over the business in a few years. He feels that without SB 158 this may not be possible. He believes this legislation is necessary, and he urged support of SB 158.

ORVILL NASH, Red Stone, stated he has been an implement dealer for 45 years and a farmer all his life, and wished to speak in favor of SB 158. He urged support of this bill to help offset some of the advantages taken of dealers by manufacturers. He informed that FHA records show 13 out of the last 17 years were declared disaster years. He stated he operates in Daniels and Sheridan Counties. 25% of Daniels County is in the CRP, which is the maximum allowed; 20% of Sheridan County is in CRP. Numerous auction sales have occurred and many bankruptcies. Some bankers have told farmers if they need equipment to go to an auction to buy it. He stated he was terminated by a major manufacturer and the reason given was lack of minimum sales and lack of computer. He feels the manufacturers are unfair regarding parts. In about four or five years after a new piece of equipment has come out, there will be letter in front of the part number in the price book indicating that the next year the part will be non-returnable. That would be about the time the part starts getting used. This means the major parts business is running in obsolete parts as far as the manufacturer is concerned regarding returns. In about 15 years with a major line, he had about \$110,000 worth of parts and they would accept \$60,000, leaving \$50,000 with no market. These are some of the problems of the dealers, according to Mr. Nash. He asked for 100% return on all parts, attachments and whole goods; freight collect, and any other losses to the dealer incurred by cancellation. He asked for support of SB 158.

FRANK (BUD) DANIELS, Montana Farmers Union, stated he is in support of SB 158. He stated he has a farm near Sidney, Montana, which is also in the drought area. He stated they, too, are seeing the dealers disappear. He stated during the testimony he learned a number of things he did not know. He advised that a friend who works for a consulting firm in Boston told him their firm was working for Deutz-Allis, and they were trying to decide how many dealers they needed in Montana. Their recommendation was that there be a minimum of five and a maximum of seven. This means some farmers will be an extremely long way from their dealer, as he is. Many must make overnight trips, resulting in lost time away from the farm and additional expense. He urged support of SB 158.

KAY NORENBURG, representing Wives Involved in Farm Economics, stated that group wished to support SB 158.

RANDY JOHNSON, Executive Vice-President of the Montana Grain Growers Association, stated their group also supports SB 158. He stated they are well aware of the economic condition of rural Montana in terms of producers. They also recognize that the people supplying the industry, in particular the implement dealers, have suffered most in percentages. They believe SB 158 might help and they urged passage.

DENNIS NATHE, Senate District 10, northeastern Montana, stated he supports SB 158. He is concerned that they are going to lose a whole infrastructure of support services in rural Montana. This would be one small step to slow that down. He informed from personal experience how far you have to travel for parts for Massey Ferguson. Now they are seeing other major lines also going out. He believes something must be done to maintain that infrastructure, and urged passage of SB 158.

LINDA NELSON, Representative from House District 19, located in northeastern Montana, stated she is in support of this bill, and is one of the co-sponsors. She said she is speaking as a resident of a community that is losing its implement dealerships and as a farm wife who has to be the "gopher" who runs for parts. She advised it is devastating to not have parts and machinery available. She feels this bill is very important, and asked for the committee's concurrence.

BOB WILLIAMS, Senate District 15, referred to Exhibit #3 which contains a letter from North American Equipment Dealers Association, signed by William E. Galbraith. About six years ago, the effect of the Tenneco takeover of I. H. International was taking place. He informed that Blake Wordal, of the Hardware and Implement Dealers, came and wondered if anything could be done about getting a bill introduced into the Legislature to try to do something to ward off what Tenneco was doing to some of the dealers. The deadline had passed to get a bill through; however, he and Senator Aklestad managed to get a bill out on the floor, through the House, and it was signed by the Governor on the 46th

day. He stated he wished to emphasize the fact that any action taken here in the Legislature reaches out a long way. He commended Senator Jergeson for bringing this to their attention in order to keep abreast of the major manufacturers. He strongly recommended a do pass on SB 158.

Opponents' Testimony:

RONALD WATERMAN stated he was appearing on behalf of Case Corporation in opposition to SB 158. He presented written testimony to the committee members (Exhibit #4).

Questions From the Committee:

Senator Aklestad stated he agrees with the bill but he wished to make sure they have a bill that will do what they want it to do. He asked what the effective date would be.

Senator Jergeson stated he believed they should discuss the effective date; if there were a July 1 effective date, he would not want to precipitate a rash of cancellations before July 1. Therefore, an immediate effective date would be considered.

Senator Aklestad further asked if the bill would be retroactive on old contracts.

Senator Jergeson stated he was probably making that assumption. He believed according to current law, contracts have a ninety-day notice provision, so the contracts are relatively fluid. As he understands it, the dealers have been given no opportunity to negotiate changes in the terms of those contracts. The contracts have been changing at quite a rapid pace, and believes they have an opportunity to slow the changes in those contract.

Senator Aklestad asked if they are assuming that the contracts would be retroactive without renegotiating the existing contract. Senator Jergeson stated they would probably need some legal advice on that question. Senator Aklestad also asked if there would be any conflict regarding Federal statutes. Senator Jergeson stated he is not aware of any.

Senator Devlin asked how many dealerships are in the state. Mr. Brooks advised there are approximately 178 dealers; that is an attrition of over 60% in the last few years.

Senator Devlin also asked why the Department of Commerce staff member was present. Senator Jergeson advised that the Implement Dealer Statute has been assigned to the Commerce Department for some time, which is one of reasons why the lone opponent to the bill asked why they were doing this for just one part of the community in the towns. According to Senator Jergeson, a specific part of the MCAs applies to farm dealerships and the bill must apply to that section.

Senator Devlin asked if a dealer can bring legal action. Mr. Brooks stated they can bring legal action and currently there are several dealerships involved in lawsuits. He referred to Exhibit #3 which described a lawsuit recently settled in Missouri against Massey Ferguson. He believes there will be others if the current trend continues.

Senator Devlin asked what if a dealer quits a dealership. He believed the company would be difficult to deal with to buy back all the parts. Mr. Brooks stated they would have to negotiate.

Senator Swift asked if the amendment bringing 85% to 100% is based on this recent letter, or is there a contract agreement which states the level of percent that you would get back. Mr. Brooks stated the current statute states 85% but they are trying to get the dealer's raw cost, because there are other costs which he will never be able to recover.

Senator Koehnke asked if the manufacturers have been taking any of the parts back. Mr. Brooks stated they have been taking some parts back. He referred to one testimony which indicated the dealer was able to return about 60% of his parts and recover 85% of the cost as listed in the last catalog.

Senator Beck asked if the parts are secured by a local bank loan. Mr. Brooks stated it is his understanding that those parts are brought in by the dealership and paid for by the dealership. There is some foreplanning, but there comes a time when that foreplanning stops and they have to pay for it. Senator Beck commented that there are probably many dealerships across the state that have large liabilities against their property, and if that dealership is canceled it could completely eliminate the security for the borrowing institution. He also stated he is curious about the contracts for a minimum amount of sales to be performed by a dealership. He asked if the manufacturer takes into consideration weather, economic conditions or anything of that nature. Mr. Brooks stated the main consideration is the quota system.

Senator Aklestad asked when the company comes up with new quotas, do they try to change that quota while the dealer has an existing contract. Mr. Munson said it might be called an amendment or a notification that comes out each year from the company in written form. The original contract has no quota stated. Senator Aklestad asked then if the contract is open-ended for negotiation. Mr. Munson stated there is actually no negotiation - the manufacturer tells the dealer what they are expected to perform. Senator Aklestad asked if it is above and beyond the contract that is signed, and Mr. Munson stated that was correct.

Senator Williams stated in response to Senator Devlin's concern about the legality of the bill, he would assume that it

would be legal. Because of the bill passed in 1985, it has been tested in court, and he believes it is safe.

Closing by Sponsor:

Senator Jergeson stated he would like to respond to some comments made by Mr. Waterman on behalf of Case Corporation. Mr. Waterman offered testimony that the reason dealerships are being lost and farm communities are losing population is because farm income is down. However, Senator Jergeson understands that some of the dealers who have been canceled have been making profits but they failed to meet a quota. One comment by Mr. Waterman that disturbed Senator Jergeson was that this was an anti-business bill. He stated it may be from the standpoint of Case Corporation, but trying to defend friends and neighbors in the farm implement business in this state is eminently a pro-business bill. He requested the committee to join with him in making the necessary improvements in the bill, and then passing a good effective bill out of this committee.

EXECUTIVE ACTION ON SENATE BILL 161

Motion:

Senator Williams moved that Senate Bill 161 do pass.

Discussion:

Senator Beck expressed concern about the volunteer program of reporting chemicals on an individual's property.

Senator Williams said his understanding of the bill's purpose was to compile information and then come back in two years with a program for recommendation.

Senator Devlin asked if it was possible to obtain a list of banned chemicals. Senator Jergeson said the Department of Agriculture could probably supply that information.

Senator Aklestad asked what would happen if they do nothing with the bill. Chairman Jergeson stated no inventory would be compiled and no plan for disposal would be forthcoming.

Senator Swift commented that if action is not taken now, they will be forced to do it two years from now. He believes it will cost less to look at it now.

Senator Williams stated he wished he could get a definition of the difference between hazardous waste and hazardous material, and the handling of it.

ROLL CALL
AGRICULTURE COMMITTEE

DATE 1/30/91

52nd
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	/		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

ADRIENNE
EXHIBIT NO. #2
DATE 1/30/91
BILL NO. SB 158

SUGGESTED AMENDMENTS TO SENATE BILL 158

1. PAGE 7 LINE 8 FOLLOWING THE WORD PARTS. INSERT " PLUS FREIGHT TO RETURN INVENTORY AND PARTS."
2. PAGE 8 LINE 11 FOLLOWING THE WORD ITEMS. STRIKE," EXCEPT REPAIRS PARTS"
3. PAGE 8 LINE 12 FOLLOWING CANCELLATION STRIKE THE WORD "AND" INSERT "PLUS FREIGHT TO RETURN INVENTORY."
4. PAGE 8 LINE 13 ITEM (b) STRIKE "85" INSERT "100"
5. PAGE 8 LINE 14 FOLLOWING THE WORD LIST STRIKE "OR" AND INSERT A "," FOLLOWING THE WORD CATALOG INSERT "OR LAST CATALOG, OR LAST PRICE LIST IN WHICH THE REPAIR PARTS WERE LISTED AS"
6. PAGE 8 LINE 16 FOLLOWING THE WORD CANCELLATION STRIKE THE PERIOD AND INSERT "PLUS FREIGHT TO RETURN REPAIR PARTS."
7. PAGE 9 LINE 2 SECTION (b) STRIKE "85" AND INSERT "100"
8. PAGE 9 LINE 3 FOLLOWING THE WORD LIST. STRIKE "OR" INSERT A "," FOLLOWING THE WORD CATALOG INSERT "OR LAST CATALOG, OR LAST PRICE LIST IN WHICH REPAIR PARTS WERE LISTED BY"



MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION

318 N. Last Chance Gulch
P.O. Box 440
Telephone 406/442-3388
Helena, Montana 59624

the advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY
JANUARY 30, 1991
ROOM 413-15

SENATE AGRICULTURE
EXHIBIT NO. #3
DATE 1/30/91
BILL NO. SB 158

SENATE BILL 158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, MANAGING DIRECTOR OF THE MONTANA HARDWARE & IMPLEMENT ASSOCIATION. WE REPRESENT A NUMBER OF FARM IMPLEMENT DEALERS THROUGHOUT THE STATE. I AM HERE TODAY TO URGE YOUR SUPPORT OF SENATE BILL 158.

AS WE ALL KNOW, FOR A NUMBER OF YEARS, THE AGRICULTURE INDUSTRY IN OUR STATE ~~FOR~~ HAS BEEN UNDER ECONOMIC STRESS. LIKEWISE, THOSE MAIN STREET MERCHANTS WHO SERVE THIS INDUSTRY HAVE HAD VERY DIFFICULT ECONOMIC TIMES. WE ARE SEEING MAJOR CHANGES IN THE WAY MANUFACTURERS OF FARM IMPLEMENT EQUIPMENT SERVE AND HANDLE THEIR DEALER AGREEMENTS.

SOME OF THE CHANGES WE ARE SEEING IN THE INDUSTRY ARE:

1. THE RIGHT TO SUCCESSION BEING QUESTIONED AND, IN SOME CASES, THE DEALERSHIP BEING CANCELED WHEN THE CURRENT OWNER RETIRES OR IS DECEASED. THIS PRESENTS A MAJOR PROBLEM TO THE DEALER OR HIS FAMILY. IN MOST CASES THEIR MAJOR SAVINGS ARE TIED UP IN THE BUSINESS.

2. WHEN A DEALERSHIP IS TERMINATED, THEN THE QUESTION OF INVENTORY AND REPAIRS PARTS BECOMES A MAJOR QUESTION. SINCE THE DEALER HAS SPENT YEARS BUILDING THE MARKET FOR THE EQUIPMENT IN HIS AREA AND BY THE DEMANDS OF THE COMPANY, AS WELL AS PROPER SERVICE TO HIS CUSTOMERS, INVENTORIES CAN BE QUITE LARGE. WE FEEL, IF A DEALERSHIP IS CANCELED BY THE COMPANY, THEN THE DEALER SHOULD AT LEAST RECOVER HIS RAW COST FROM THE MANUFACTURER FOR INVENTORY OF EQUIPMENT AS WELL AS REPAIR PARTS.

3. MANUFACTURERS ARE DEMANDING THAT DEALERS PRODUCE A CERTAIN VOLUME EACH YEAR IN THEIR PRODUCT LINE. IF THEY DO NOT REACH THIS LEVEL OF SALES, THEN THE COMPANY VOIDS THE DEALERSHIP AGREEMENT. IN THE CASE OF DEALERS OPERATING IN AREAS THAT HAVE BEEN DECLARED A DROUGHT AREA, THEN WE FEEL WE NEED PROTECTION FROM THE MANUFACTURERS, SO THEY MAY NOT REMOVE THE DEALERSHIP AGREEMENT, UNTIL THE FARMER, RANCHER AND THE DEALERSHIP CAN RECOVER. THIS BILL ADDRESSES THIS ISSUE FAIRLY FOR BOTH THE DEALER AS WELL AS THE MANUFACTURER.

PAGE 2

4. A TREND WE SEE IN THIS INDUSTRY IS. TO ESTABLISH LARGE REGIONAL DEALERS WITH A FEW BRANCH STORES IN SELECTED AREAS. THIS WILL MEAN IN MANY CASES LESS SERVICE AND MORE COSTLY SERVICE AS THE FARMER / RANCHER WILL HAVE TO TRAVEL GREATER DISTANCES TO OBTAIN PARTS AND REPAIRS.

WE URGE YOUR SUPPORT OF SENATE BILL 158.

WE HAVE SEVERAL IMPLEMENT DEALERS HERE TODAY. WHO WOULD LIKE TO GIVE SOME BRIEF TESTIMONY. THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

I am Ronald F. Waterman and I appear on behalf of Case Corporation., Case is a manufacturer of farm equipment with a network of dealers in Montana as well as the other 49 states. I appear today in opposition to Senate Bill 158 and urge this committee to not pass this legislation.

There are a number of reasons to support Case's opposition to this legislation. The most fundamental however is that the bill is an inappropriate means to address the unfortunate reality of events which has occurred in all rural areas of Montana, as well as all other states. What this bill attempts to do is to respond to the shrinking population in rural areas. It does so by attempting to keep one and only one type of business present in those counties.

The fact is that the populations in rural areas are shrinking. This bill will not prevent that development from continuing. I would like you to consider the information from just two counties in Montana which demonstrate this point. Daniels County has lost 16% of its population over the past 15 years. At the same time it has lost 35% of its farm proprietorships. Its total farm income has declined and in three of the last six years its farm income has been a negative figure, totalling more than \$7 million.



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Serving Farm, Industrial and Outdoor Power Dealers
10877 Watson Road • St. Louis, Missouri 63127-1081 • 314/821-7220



GENERAL LETTER

G.L. S-2910

January 25, 1991

SUBJECT: *Massey Ferguson Case*
Re: Parts Return

FOR YOUR INFORMATION

TO: Association Managers

As you are aware, Massey Ferguson (MF) has continually refused to repurchase combine and four-wheel drive parts on termination of an MF dealer. The basis for MF's refusal to purchase parts was that there had been an assignment of all of the obligations to the Massey Combines Corporation (MCC) on May 9, 1986, and that MF has consistently relied on this assignment as a basis for not having an obligation to repurchase the combine and four-wheel drive tractor parts.

A recent United States District Court for the Western District of Missouri case gives former MF dealers encouragement in the case of Lewis G. Moore & Co. v. Massey Ferguson, Inc., cause number 89-0306-CV-W-8 (January 8, 1991). Until now, there have been no reported case decisions, as MF has settled before a decision by a court.

Moore was an MF dealer, terminated in November 1987, and returned parts pursuant to a letter received from MF. MF refused to pay for \$96,176 of repair parts which were returned to MF.

Moore filed suit for the value of the parts MF refused to repurchase. Moore subsequently sought a summary judgment under the Missouri Dealer Buy-back statute and breach of contract. The Court granted Moore a summary judgment in the amount of \$96,176, plus interest and attorney's fees.

The basis of the Court's decision was the purported transfer of MF's obligation to MCC in the May 9, 1986 assignment was not a novation (a substitution of parties) as argued by MF, and MF had the obligation to repurchase the parts.

The Court relied on Missouri statute in issuing the summary judgment. Interest was awarded as of May 9, 1988.

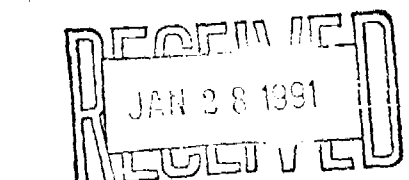
The law firm of Seigfreid, Bingham, Levy, Selzer & Gee, counsel for the Western Association, represented Moore. If you wish to receive a copy of the decision, please let Jackie Warner know and we will furnish a copy to you.

Sincerely,

William E. Galbraith
Executive Vice President

WEG:jw

cc: Board of Directors
Advisory Board



Sheridan County has experienced the same declines. It has suffered a population decrease of 11% and a 38% farm proprietorship decrease. Likewise, its farm income is substantially reduced.

The consequences of these population shifts and decline in farm income are that many rural areas do not have the population base to support the same number of businesses, goods and services they once did. Manufacturers who must spend money to retain dealers and to support them are forced to make difficult choices. This includes advising some dealers, who are marginal and whose population and economic base have eroded, that the dealership must be phased out and will not continue beyond the current dealer.

No one wants to make these decisions and no manufacturer is anxious to make these difficult decisions. But the fact of the matter remains the decisions must be made.

Senate Bill 158 ignores this reality and states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", a showing the succession would be detrimental to the public interest or to the representation of the manufacturer. This standard is

vague and unenforceable, it fails to consider the interests of the manufacturer and essentially assures that every rejection will be challenged.

Senate Bill 158 likewise sets up an administration procedure with court review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership.

Senate Bill 158 prevents termination for a natural disaster or for circumstances beyond the dealer's control. Again the language is vague. Moreover, the prohibition will always be invoked. I cannot think of any unsuccessful dealer who would not blame the weather or something beyond his control to prevent termination. This section says that if a dealer is a poor salesman and if other dealers are more aggressive and successful, nevertheless the manufacturer is stuck with that dealer, because after all, his inability to sell is beyond his control as he competes against other more successful salesmen.

It is basic contract law that there must be two parties willing to consent to do business with each other

before a contract can be created. This bill alters that concept and forces one party, a manufacturer, to accept another as a dealer although the manufacturer does not know and has not willingly agreed to do business with that successor dealer. Interestingly, Senate Bill 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. What is true for the family members is likewise true to the manufacturer.

Finally, I must advise that this bill is probably unconstitutional. It seeks to impair the obligations and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. I also question the validity of imposing both a penalty, making the violation of the statute quasi-criminal in nature and also imposing the prospect of treble damages in the event there is a termination despite the terms of this section.

The Montana legislature has frequently been accused

of being anti-business. It is legislation like this which has earned that reputation. I submit that this legislature should work to remain neutral toward business. To do so requires the defeat of SB 158.

For these reasons given above, I respectfully request that this bill receive a do not pass recommendation from this committee.

1534R

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
ANNIE BILLES	Div. of Office Dir.	SB 158	INFORMATION	
Charles Brooks	MT Food & Drug	SB 158	✓	
Orrill NAS	Monte Engle	SB 158	✓	
Will Hansen	Hansen Imp. & Maint.	SB 158	✓	
KEN MUNSON	MUNSON Equipment	SB 158	✓	
Lynnon Coburn	PAPE Equipment	SB 158	✓	
BOB POTTER	TOWN & RANCH SERVICE	SB 158	✓	
Jon Waterman	Case Corp	SB 158		✓
Chris Kampmann	MEIC	SB 161	✓	
Janet Ellis	MT Audubon	SB 161	✓	
Harry George	MT. Dept. of Agric. - Farm & Home Imp.	SB 161		
John Sample	MAT.A. (Aerial Application)	SB 161	✓	
Randy Johnson	INBAH	SB 158	✓	
Kay NOREMBERG	WILEE	SB 158	✓	
Bob Daniels	USFW	SB 158		
Linda Nelson	ICB 19	SB 158	✓	
Pam Langley	Montana Agri Business Assn	SB 161	✓	

EXECUTIVE ACTION ON SENATE BILL 64Recommendation and Vote:

Senator Rea made a motion to TABLE Senate Bill 64.
In favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE BILL 158Discussion:

Senator Jergeson advised that the amendments which Doug Sternberg, legal counsel, has prepared incorporate by and large the amendments that were offered during discussion, and also incorporate the discussion about the wisdom of putting an immediate effective date on the bill. Rather than risk the possibility of dealerships being canceled prior to July 1, an immediate effective date was included. The other amendments make changes of raising the 85% to 100%, and also includes the cost of freight to return repair parts. (Exhibit #4)

Doug Sternberg stated that many of the questions posed by Ron Waterman of the Case Corporation had to be considered as part of the drafting of this bill in order to present some legislation that was valid. In answer to a question posed by Senator Aklestad, Mr. Sternberg stated that his research into Federal Commerce Code did not reveal any provisions that would be applicable to farm implement dealership franchises. Mr. Waterman's testimony reinforced this research because Mr. Sternberg believed if there was something out there, Mr. Waterman would have brought it before the committee.

According to Mr. Sternberg, Mr. Waterman questioned the constitutionality of this concept as it would apply to the Article that prohibits the Legislature from passing bills that would impair contracts that are out there. This question came to his mind in drafting the bill. If the text of the bill is examined, it will indicate that it does not require any of the parties who are presently involved in a dealership contract to change the contract at all. The current contracts will be allowed to continue to run their term. Section 2 is the heart of this legislation, according to Mr. Sternberg, and he clarified that section.

He pointed out the wording of the designated successor law as it applies to farm implement dealers is taken almost word for word from a present law on the books that relates to automobile dealer franchises. Since 1977 automobile franchisees have been able to designate a successor, and the wording is now being applied to farm implement dealers. He stated there is certainly some precedent in the law for this bill. Also included is the definition of good cause, which Mr. Waterman indicated as being

vague. That language is taken word for word out of the present automobile franchise law, and apparently it is working for them.

Another point referred to by Mr. Waterman as being vague regarded Section 6 wherein conditions are set out for illegal cancellation based on natural disaster. Mr. Sternberg informed that section was taken from Subsection 4 of Section 325E.063 of the present Minnesota code. As far as he knows, it has not been tested in Minnesota but he feels there is some legal precedent for that section. His research indicated there have been court cases across the country that have been compiled in American law reviews that speak to the validity, construction, and effect of a clause in franchise contract which prohibits transfer of a franchise or contract.

According to Mr. Sternberg, Mr. Waterman also alluded to the fairness of the treble damages clause, and there have been numerous court cases dealing with damages for termination of auto dealership contracts that would probably apply as well to farm implement dealerships.

He also pointed out that there is a severability clause in this bill. By way of clarification, he explained the amendments in detail.

Senator Aklestad stated that in the succession section, Mr. Sternberg mentioned existing contracts. He asked whether that also includes at the expiration of contracts that the father would be able to designate a family member. Mr. Sternberg stated that as long as there is a valid contract, and the dealer notifies the grantor within 120 days of his intent to retire or other circumstance, this would apply. He added that unless there is a valid dealership contract in place, recourse could not be granted.

Senator Jergeson informed the committee that Mr. Charles Brooks of the Montana Hardware and Implement Association was present, and had supplied the committee with copies of legislation from nearby states (Exhibit #3).

Doug Sternberg stated he wished to add that the aspect dealing with the designating of a family member to carry on a dealership has good precedent in Montana law from the automobile dealership franchise succession laws which have been on the books for about 14 years. One aspect that is not clear or that has not been tested regards allowing succession to another person that is not a family member. There is a section in the new law that says that nothing in this law precludes a dealer from designating any person as his successor.

Senator Rea asked if the increase to 100% can be justified. Mr. Brooks advised that there are some costs the dealer will never recover. The state of Washington requires 105%, which includes 5% stocking charge.

Mr. Sternberg also advised that there is a long list of inventory that is not subject to repurchase requirements.

Amendments, Discussion, and Votes:

Senator Beck made a motion that the amendments prepared by Doug Sternberg be adopted.

Senator Aklestad questioned whether 100% without return freight charge would be enough. Senator Jergeson pointed out how heavy repair parts are, and it would be an extreme expense for a person who is going out of business to have to pay that freight. Senator Beck added that the dealer paid for the parts to get to his store; its only fair the manufacturer should pay for the return trip.

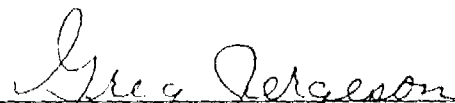
Those in favor of adopting amendments - 9; opposed - 0.
MOTION CARRIED.

Recommendation and Vote:

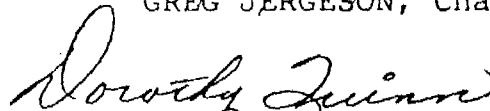
Senator Aklestad made a motion that Senate Bill 158 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

ADJOURNMENT

Adjournment At: 4:55 P.M.



GREG JERGESON, Chairman



DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL
AGRICULTURE COMMITTEE

Friday
DATE 2/1/91

52nd
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 2, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration Senate Bill No. 158 (first reading copy - white), respectfully report that Senate Bill No. 158 is amended and as so amended do pass:

1. Title, line 13.

Following: "PENALTIES;"

Strike: "AND"

2. Title, line 14.

Following: "HCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3, line 12.

Strike: "9"

Insert: "8"

4. Page 6, line 14.

Strike: "9"

Insert: "8"

5. Pages 6 and 7.

Following: line 24 on page 6

Strike: section 7 in its entirety

Re-number: subsequent sections

6. Page 7, lines 17 and 21

Strike: "9"

Insert: "8"

7. Page 8, line 2.

Strike: "Except as provided in Section 21, if"

Insert: "if"

8. Page 8, line 11.

Following: "items"

Strike: ", except repair parts,"

9. Page 8, line 12

Following: "cancellation"

Insert: ", plus cost of freight to return the inventory"

10. Page 8, line 13.

Strike: "853"

Insert: "1002"

11. Page 3, line 11.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

12. Page 3, line 16.

Following: "cancellation"

Insert: ", plus cost of freight to return the repair parts"

13. Page 9, line 2.

Strike: "85%"

Insert: "100%"

14. Page 9, line 3.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

15. Page 9, lines 12 through 20.

Strike: section 11 in its entirety

Remember: subsequent sections

16. Page 10, lines 3 and 6.

Strike: "9"

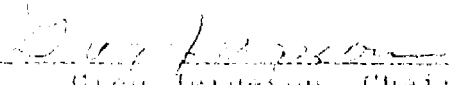
Insert: "6"

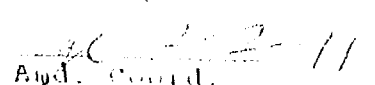
17. Page 10, line 7.

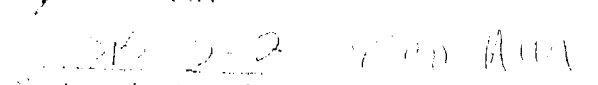
Following: line 6

Insert: "NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval."

Signed:


Greg Jergeson, Chairman


Aylmer, Coord.


Sec. of Senate

LEGISLATURE OF THE STATE OF IDAHO

CENTENNIAL LEGISLATURE

SECOND REGULAR SESSION - 1990

IN THE SENATE

SENATE AGRICULTURE

AMEND NO. #3

SENATE BILL NO. 1496, AS AMENDED IN THE HOUSE

DATE 2/1/91

BY COMMERCE AND LABOR COMMITTEE

BILL NO. SB 158

AN ACT

RELATING TO SUPPLIERS AND DEALERS IN AGRICULTURE EQUIPMENT; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION THERETO OF A NEW CHAPTER 24, PART 1, TITLE 28, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO PROVIDE DEFINITIONS, TO DESIGNATE UNLAWFUL ACTS AND PRACTICES, TO PROVIDE FOR NOTICE OF AND GOOD CAUSE FOR TERMINATION OF DEALER AGREEMENTS OR CHANGES IN THE COMPETITIVE CIRCUMSTANCES OF A DEALER'S AGREEMENT, TO SPECIFY WHAT SHALL CONSTITUTE GOOD CAUSE, TO PROVIDE FOR REMEDIES AND ENFORCEMENT, TO PROVIDE SEVERABILITY, AND TO PROVIDE AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Part 1, Title 28, Idaho Code, and to read as follows:

TITLE 28

CHAPTER 24

PART 1

AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

28-24-101. LEGISLATIVE FINDINGS AND INTENT. The legislature of this state finds that the retail distribution and sale of agricultural equipment, utilizing independent retail businesses operating under agreements with the manufacturers and distributors thereof, vitally affects the general economy of the state, public interests and public welfare and that it is necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers and distributors.

28-24-102. DEFINITIONS. As used in this chapter:

(1) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(2) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(3) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing.

(4) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services.

1 (5) "Good cause" means failure by an equipment dealer to substantially
2 comply with essential and reasonable requirements imposed upon the equipment
3 dealer by the dealer agreement, provided, such requirements are not different
4 from those requirements imposed on other similarly situated equipment dealers
5 in the state either by their terms or in the manner of their enforcement.

6 (6) "Supplier" means the manufacturer, wholesaler or distributor of the
7 equipment to be sold by the equipment dealer, or any successor in interest to
8 or assignee of the supplier. A successor in interest includes any purchaser of
9 assets or stock, any surviving corporation resulting from merger or liquidation,
10 any receiver or any trustee of the original supplier.

11 28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall be
12 a violation of the provisions of this chapter for a supplier to:

13 (1) Require or attempt to require any equipment dealer to order or accept
14 delivery of any equipment or parts or any equipment with special features or
15 accessories not included in the base list price of such equipment as publicly
16 advertised by the supplier which the equipment dealer has not voluntarily
17 ordered;

18 (2) Require or attempt to require any equipment dealer to enter into any
19 agreement, whether written or oral, supplementing or amending an existing
20 dealer agreement with such supplier unless such amendment or supplementary
21 agreement is imposed on other similarly situated dealers in the state; } 90

22 (3) Refuse to deliver in reasonable quantities and within a reasonable
23 time after receipt of the equipment dealer's order, to any equipment dealer
24 having a dealer agreement for the retail sale of new equipment sold or distributed
25 by such supplier, equipment covered by such dealer agreement specifically
26 advertised or represented by such supplier to be available for immediate
27 delivery. The failure to deliver any such equipment shall not be considered a
28 violation of the provisions of this chapter when deliveries are based on prior
29 retail sales ordering histories, the priority given to the sequence in which
30 the orders are received or manufacturing schedules or if such failure is due
31 to prudent and reasonable restriction on extension of credit by the supplier
32 to the equipment dealer, an act of God, work stoppage or delay due to a strike
33 or labor difficulty, a bona fide shortage of materials, freight embargo or
34 other cause over which the supplier has no control;

35 (4) Terminate, cancel or fail to renew the dealer agreement of any equipment
36 dealer or substantially change the competitive circumstances of the
37 dealer agreement, attempt to terminate or cancel, or threaten not to renew the
38 dealer agreement or attempt or threaten to substantially change the competitive
39 circumstances of the dealer agreement without good cause. Nothing in this
40 paragraph shall be interpreted to apply to a discontinuation of or change in
41 the product line of an equipment dealer;

42 (5) Condition the renewal, continuation or extension of a dealer agreement
43 on the equipment dealer's substantial renovation of the equipment
44 dealer's place of business or on the construction, purchase, acquisition or
45 rental of a new place of business by the equipment dealer, unless:

46 (a) The supplier has advised the equipment dealer in writing of its
47 demand for such renovation, construction, purchase, acquisition or rental
48 within a reasonable time prior to the effective date of the proposed date
49 of renewal or extension, but in no case less than one (1) year; and

50 (b) The supplier demonstrates the need for such change in the place of
51 business and the reasonableness of the demand with respect to marketing
52 and servicing the supplier's products and any significant economic conditions
53 existing at the time in the equipment dealer's trade area, and the

1 equipment dealer does not make a good faith effort to complete such construction or renovation plans within one (1) year.

2 (6) Discriminate in the prices charged for equipment of like grade and
3 quality sold by the supplier to similarly situated dealers in this state where
4 the effect of such discrimination may be to substantially lessen competition
5 or tend to create a monopoly in a line of commerce. The provisions of this
6 subsection do not prevent the use of differentials which make only due allowance
7 for differences in the cost of manufacture, sale or delivery of equipment
8 resulting from the differing methods or quantities in which such equipment is
9 sold or delivered; provided that nothing shall prevent a supplier from offering
10 a lower price in order to meet an equally low price of a competitor, or
11 the services or facilities furnished by a competitor;

12 (7) Unreasonably withhold consent for an equipment dealer to change the
13 capital structure of the equipment dealership or the means by which it is
14 financed, provided that the equipment dealer meets the reasonable capital
15 requirements of the supplier;

16 (8) Prevent, by contract or otherwise, any equipment dealer or any officer,
17 member, partner or stockholder of an equipment dealership from selling,
18 assigning, or transferring any interest or portion thereof held by any of them
19 in the equipment dealership to any other person or party; provided, however,
20 that no equipment dealer, officer, partner, member or stockholder shall have
21 the right to sell, transfer, or assign the equipment dealership or the power
22 of management or control thereof without the written consent of the supplier,
23 except that such consent shall not be unreasonably withheld if the buyer,
24 transferee, or assignee meets the reasonable financial, business experience
25 and character standards of the supplier;

26 (9) Require an equipment dealer to assent to a release, assignment, novation,
27 waiver or estoppel which would relieve any person from liability imposed
28 by this chapter;

29 (10) (a) Unreasonably withhold consent, in the event of the death of the
30 equipment dealer or the principal owner of the equipment dealership, to
31 the transfer of the equipment dealer's or the principal owner's interest
32 in the equipment dealership to a member or members of the family of the
33 equipment dealer or of the principal owner or to another qualified individual,
34 if the family member or other qualified individual meets the reasonable financial,
35 business experience and character standards of the supplier. A supplier shall have
36 sixty (60) days to consider a request to make a transfer to a family member or
37 other qualified individual. If, within that period, the supplier determines that
38 the designated family member or other qualified individual does not meet the
39 reasonable financial, business experience and character standards of the supplier,
40 it shall provide the designated family member or other qualified individual with
41 written notice of its objection and the specific reasons for withholding its
42 consent. If the family member or other qualified individual reasonably satisfies
43 the supplier's objections within sixty (60) days after notice thereof, the
44 supplier shall approve the transfer. As used in this paragraph, "family" means
45 and includes a spouse, parents, siblings, children, step-children, sons-in-law,
46 daughters-in-law, and lineal descendants, including those by adoption of the
47 equipment dealer or principal owner of the equipment dealership. Nothing in this
48 paragraph shall entitle a family member or other qualified individual to continue
49 to operate the dealership without the consent of the supplier.

50 (b) Notwithstanding the provisions of paragraph (a) of this subsection,
51 in the event that a supplier and equipment dealer have duly executed an
52
53
54

1 agreement concerning succession rights prior to the equipment dealer's
2 death, and if such agreement has not been revoked, such agreement shall be
3 observed.

4 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT
5 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier
6 shall provide written notice to the equipment dealer of any proposed termina-
7 tion or nonrenewal of a dealer agreement or substantial change in the competi-
8 tive circumstances of a dealer agreement. The notice shall state the reason(s)
9 constituting good cause for the action proposed to be taken. Except where good
10 cause is alleged under the provisions of paragraphs (a) through (e) of subsec-
11 tion (2) of this section, such notice shall be provided to the equipment
12 dealer not less than ninety (90) days before the proposed action is to become
13 effective. Except where good cause is alleged under paragraphs (a) through (d)
14 of subsection (2) of this section, the equipment dealer shall be given sixty
15 (60) days within which to cure any claimed deficiency, and the notice shall
16 advise the dealer of his right to cure. If the claimed deficiency is rectified
17 within sixty (60) days, the notice shall be void and the proposed action shall
18 not become effective. Notwithstanding the equipment dealer's failure to cure
19 the deficiency or deficiencies claimed, where a ninety (90) day notice is
20 required to be given by the supplier, the contractual term of the dealer
21 agreement shall not expire, nor shall the dealer agreement be otherwise termi-
22 nated or cancelled, nor shall the equipment dealer's competitive circumstances
23 be substantially changed prior to the expiration of at least ninety (90) days
24 following such notice without the written consent of the equipment dealer..

25 (2) As used in this chapter, "good cause" shall exist, but not be limited
26 to the following circumstances when the equipment dealer has:

- 27 (a) Transferred a controlling ownership interest in the equipment dealer-
28 ship without the supplier's consent;
- 29 (b) Made a material misrepresentation to the supplier;
- 30 (c) Filed a voluntary petition in bankruptcy or has had an involuntary
31 petition in bankruptcy filed against the equipment dealer which has not
32 been discharged within sixty (60) days after the filing; is in default
33 under the provisions of a security agreement in effect with the supplier;
34 or is insolvent or in receivership;
- 35 (d) Been convicted of a crime, punishable for a term of imprisonment for
36 one (1) year or more;
- 37 (e) Failed to operate in the normal course of business for ten (10) con-
38 secutive business days or has terminated said business;
- 39 (f) Relocated the equipment dealer's place of business without the
40 supplier's consent;
- 41 (g) Consistently engaged in business practices which are detrimental to
42 the consumer or supplier by way of excessive pricing, misleading advertis-
43 ing, failure to provide service and replacement parts or perform warranty
44 obligations;
- 45 (h) Inadequately represented the supplier over one (1) year or such time
46 period specified in the dealer agreement causing lack of performance in
47 sales, service or warranty areas and failed to achieve market penetration
48 at levels consistent with similarly situated equipment dealerships in the
49 state based on available record information;
- 50 (i) Consistently failed to meet building and housekeeping requirements,
51 or has failed to provide adequate sales, service or parts personnel com-
52 mensurate with the dealer agreement;
- 53 (j) Failed to comply with the applicable licensing laws pertaining to the

1 products and services being represented for and on supplier's behalf;
2 (k) Materially failed to comply with the terms of the dealer agreement.

3 28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recovered
4 for losses sustained as a consequence of any violation of the provisions of
5 this chapter. Such recovery may also include a requirement that the supplier
6 repurchase at fair market value any data processing hardware and specialized
7 repair tools and equipment previously purchased from the supplier or approved
8 vendor of the supplier pursuant to requirements of the supplier. Injunctive
9 relief may also be granted against any actual or threatened violation of the
10 provisions of this chapter. In any action brought under this chapter the pre-
11 vailing party shall be entitled to recover reasonable attorney fees and costs.
12 The remedies set forth in this section shall not be deemed exclusive and shall
13 be in addition to any other remedies permitted by law.

14 28-24-106. SEVERABILITY. The provisions of this act are hereby declared
15 to be severable and if any provision of this act or the application of such
16 provision to any person or circumstance is declared invalid for any reason,
17 such declaration shall not affect the validity of remaining portions of this
18 act.

19 28-24-107. EFFECTIVE DATE -- APPLICATION TO AGREEMENTS. This act shall
20 take effect on July 1, 1990, and shall apply to any dealer agreement then in
21 effect which has no expiration date and which is a continuing agreement and
22 all other dealer agreements entered into or renewed on or after such effective
23 date.

Amendments to Senate Bill No. 158
First Reading Copy

Requested by Senator Jergeson
For the Senate Committee on Agriculture

Prepared by Doug Sternberg
January 28, 1991

1. Title, line 13.
Following: "PENALTIES;"
Strike: "AND"
2. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
3. Page 3, line 19.
Strike: "9"
Insert: "8"
4. Page 6, line 14.
Strike: "9"
Insert: "8"
5. Pages 6 and 7.
Following: line 24 on page 6
Strike: section 7 in its entirety
Renumber: subsequent sections
6. Page 7, lines 17 and 21.
Strike: "9"
Insert: "8"
7. Page 8, line 2.
Strike: "Except as provided in [section 7], if"
Insert: "If"
8. Page 8, line 11.
Following: "items"
Strike: ", except repair parts,"
9. Page 8, line 12
Following: "cancellation"
Insert: ", plus cost of freight to return the inventory"
10. Page 8, line 13.
Strike: "85%"
Insert: "100%"
11. Page 8, line 14.
Following: "catalog"
Insert: "or the last catalog or price list in which the repair
part was listed as"

12. Page 8, line 16.

Following: "cancellation"

Insert: ", plus cost of freight to return the repair parts"

13. Page 9, line 2.

Strike: "85%"

Insert: "100%"

14. Page 9, line 3.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

15. Page 9, lines 12 through 20.

Strike: section 11 in its entirety

Renumber: subsequent sections

16. Page 10, lines 3 and 6.

Strike: "9"

Insert: "8"

17. Page 10, line 7.

Following: line 6

Insert: "NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval."

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date

2/1/91

Bill No.

SB 158

Time

NAME

YES

NO

SEN. AKLESTAD

X

SEN. BECK

✓

SEN. BRUSKI

✓

SEN. DEVLIN

✓

SEN. REA

✓

SEN. SWIFT

✓

SEN. WILLIAMS

✓

SEN. KOEHNKE

✓

SEN. JERGESON

✓

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion:

Senator Beck made a motion
that amendments for SB 158 be
adopted. In favor - 9; opposed - 0.
Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date

2/1/91

Bill No.

SB 158

Time

NAME

YES

NO

SEN. AKLESTAD

X

SEN. BECK

X

SEN. BRUSKI

X

SEN. DEVLIN

X

SEN. REA

X

SEN. SWIFT

X

SEN. WILLIAMS

X

SEN. KOEHNKE

X

SEN. JERGESON

X

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion:

Sen Aklestad made the
motion that SB 158 DO PASS
AS AMENDED. In favor - 9;
opposed - 0. Motion CARRIED.

Questions From Committee Members: None

Closing by Sponsor:

REP. JANE DEBRUYCKER thanked the committee for a good hearing and urged them to pass HB 682.

EXECUTIVE ACTION ON HB 682

Motion: REP. HAYNE MOVED HB 682 DO PASS.

VOTE: HB 682 DO PASS. Motion CARRIED unanimously.

HEARING ON SB 158

Presentation and Opening Statement by Sponsor:

SEN. JERGESON, Senate District 8, said when he was growing up he helped his dad in the farm implement dealership in Chinook, MT. Now most of these small town dealers are closed. He questioned some of the factors causing the loss of these dealerships. Often times the dealerships in the small community were large employers with seven to eight employees. He said it is true that agriculture has changed over the years, and a economy in the rural areas has had a large impact on the small declining communities. It appears the loss of these dealerships in the last couple of years has taken place faster than the changes in agriculture. He went to these farm implement dealers in the small communities to try and find out why they were closing. He said the information he received in all of these communities is that when the dealer is ready to retire the business closes down. The manufacturer does not let anyone else take over that dealership. SEN. JERGESON said this bill was drafted so that a family member or even a non-family member could be a successor, and if the manufacturer does not approve of the successor they would have the ability to deny the change in the franchise if they can show good cause. After the bill was drafted he was contacted by the Montana Hardware and Implement Association with other concerns and asked if he would include them in this bill. In northeastern Montana where there has been several years of drought, the manufacturers have been increasing the sales quotas on these farm implement dealers. In an area where they have been lucky to even have 10 bushels an acre for the last several years, it has been impossible for the farm implement dealers to meet some of the sales quotas that have been imposed on them. The bill provides that in those areas where there has been a natural disaster, those contracts may not be enforced. He said another problem is when an implement dealership is canceled often times the dealer may not be fully reimbursed for the cost of parts of other inventory they have that the manufacturer will not take back. SEN. JERGESON said this bill provides for the dealer to

receive 100% from the manufacturer of those returned parts and/or equipment. He said with the cost of the equipment today a small dealership can be wiped out in short order.

Proponents' Testimony:

Mr. Charles Brooks, Managing Director of the Montana Hardware and Implement Association, distributed information. EXHIBIT 1 He said that agriculture has been under economic stress for some time. He said we are seeing major changes in the way manufacturers of farm equipment serve and handle their dealer agreements. He addressed three changes taking place in the industry: 1) A dealership is often canceled when the current owner retires or is dies. This presents a major problem to the dealer or his family; in most cases their life savings are tied up in the business. 2) When a dealership is canceled by the company, the dealer should at least recover his raw cost from the manufacturer for inventory of equipment as well as repair parts, and the manufacturer should pay the return freight. 3) Dealers operating in areas that have been declared a drought area need protection from the manufacturer so they may not remove the dealership agreement until the farmer, rancher, and the dealer can recover. Mr. Brooks said this bill addresses the dealer as well as the manufacturer. He urged the committee to support SB 158.

Mr. Ken Munson, Shelby, MT of Munson Equipment, stated his support for SB 158. He said that it takes a farmer two or more good years to recover what he has lost in one bad year, and the 1980's are considered drought years. He said four years ago the manufacturer told him he had a sales quota of \$50,000 and has since increased it approximately between \$250,000 to \$300, 000. He said they also informed him there was only room for one dealership in his area and he was not going to be that dealer. Mr. Munson said the manufacturer informed him they had plans for a new facility to be in place by 1992. He said this legislation would help these small dealers to recover their costs on the parts they cannot sell. He said there is no way small dealers can comply with the manufacturer's increasing demands. He gave his support to SB 158.

SEN. DENNIS NATHE, Senate District 10, gave his support for SB 158. He also asked to have SEN. GENE THAYER, Senate District 19, Great Falls be on record in support of SB 158.

REP. DOROTHY CODY, House District 20, went on record in support of SB 158. She asked that the amendments offered by the John Deere Company be opposed; she felt they undid the intention of the legislation.

GEORGE PAUL, Executive Director, Farmers Union and Mt. Economics, said that Montana's economic health comes under stress when the symptoms appear in the small rural areas. He said the lack of income with the producers and implement dealers is a vicious

circle. Reduced incomes weaken the dealer and he cannot meet the demands placed on him by the manufacturer. Lower business volume by the dealer encourages the manufacturer to limit the number of dealerships in the state. Concentrating dealerships means that the farmer and rancher must travel greater distances to purchase equipment and parts, generating longer down times, more expenses, and a reduction in producer income. The rural community is weakened when dealerships leave the community for an environment of higher volume. The manufacturer often moves out of state and Montana loses another business. Mr. Paul commended SEN. JERGESON for SB 158. He felt the bill not only helps transfer business, but also supports the economy of the rural areas. He said Mt. Farmers Union supports this bill and urges its passage. Mr. Paul informed the committee he did not have prior knowledge of the amendments, but said he was in favor of the bill as SEN. JERGESON presented it.

Mr. Paul asked to have Kay Norenberg, WIFE recorded in favor of SB 158.

BOB STEVENS, Montana Grain Growers Association, gave his support for SB 158, but stated they do not support the amendments.

LYNDEN COBURN, President, Implement and Hardware Dealers Association, said he is also an owner of an implement dealership. Mr. Coburn said what he sees today are implement dealers with multiple lines of merchandise. The companies want dealers in the metropolitan areas so they can carry a full line of hardware, i.e., lawn and garden, etc. The companies want the dealers where the transportation is accessible. When this legislation was drafted, it was presented before the members of the association and he said it met their concerns 100 percent.

CLIFFORD HANSON, dealership in WOLF POINT, MT, said he supports SB 158 in its original form. He said Montana has to keep what industry they have because of the commitment to the customers to provide them a service.

ORVILLE NASH, NASH BROTHERS, REDSTONE, MT, has been in the implement dealership business for 4-5 years. He said a problem came about when another implement dealer was placed in his area by the manufacturer. The manufacturer set the minimum sales quota and cut the territory in half. They wanted him to install a computer system that would have cost approximately \$150,000, but was advised by his accountant not to follow the companies advice because the accountant feared that Mr. Nash's company would be canceled anyway. Mr. Nash stated they were canceled and returned \$60,000 in parts and merchandise out of \$110,000 they had in inventory. The company would not let him return \$7,000 in attachments after they had promised to transfer the attachments from the dealership before it was canceled and after they had been canceled the major manufacturer refused to take those parts. The building would have been worth \$150,000, but without the franchise it is worth approximately \$5,000 to

\$10,000.

DUANE BURKENPAS, Co-Owner of Gallatin Equipment Co., Belgrade, MT distributed information. **EXHIBIT 2** He has been an implement dealer for 30 years and a member of the Hardware Association for the same. He is also representing the Horizon Equipment Co, a John Deere dealer in Miles city, and Conrad Implement Co., in Conrad for over fifty years. He said the changes in agribusiness and the consolidation of farms have reduced the demand for farm equipment. The increased product reliability of farm equipment has reduced the replacement demand. He said the increased technology of today's farm equipment has placed more demand on the farm equipment dealer to maintain highly trained technicians to service today's equipment. The labor market has disappeared. **Mr. Burkenpas** said a survey was done and found that most of the customers were not partial to any one brand and purchased the equipment and parts where the best buy was. The last page of the exhibit offers amendments to be placed with the bill which **Mr. Burkenpas** said was best for the farmer/rancher and Montana. It will eliminate the possibilities of law suits attempting to clarify what is intended by the present definitions of successor and good cause.

DAVID BOOTIE, Bootie Implement Co., Lewistown, MT, asked the committee to pass SB 158 with the amendments that **Mr. Bukenpas** has offered.

SEN. BOB WILLIAMS, Senate District 15, said when a businessman has spent his lifetime in building the expertise and gaining the confidence of a farming/ranching community, they should have more protection than they have now. He strongly supported SB 158.

Opponents' Testimony:

RON WATERMAN, Case Implement Company, distributed information. **EXHIBIT 3.** He said SB 158 states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", showing the succession would be detrimental to the public interest or to the representation of the manufacturer. He said the standard is vague and unenforceable, because it fails to consider the interests of the manufacture and essentially assures that every rejection will be challenged. **Mr. Waterman** said this bill alters the concept of basic contract law and forces one party, a manufacturer, to accept another as a dealer, although the manufacturer does not know and has not willingly agreed to do business with that successor dealer. SB 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. He said the same should be true for the manufacturer. He said bill sets up an administrative procedure with court

review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership. This bill also prevents termination for a natural disaster or for circumstances beyond the dealer's control. Mr. Waterman advised the committee that this bill is probably unconstitutional. It seeks to impair the obligation and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses by making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. He requested this bill do not pass.

Questions From Committee Members:

REP. MCCAFFREE asked SEN. JERGESON to respond to Mr. Waterman's statement that this bill is unconstitutional. SEN. JERGESON replied that he cannot answer as an attorney, but made comparisons with an employee working for minimum wage. When the minimum wage is increased the employer has to pass that on to the employee. He said these kinds of contracts are changed all the time and felt this wasn't any different.

REP. LARSON asked SEN. JERGESON if the dealers have written contracts with the manufacturers. SEN. JERGESON said that generally they do. He said it's possible there would be oral contracts, but he seriously doubted it. REP. LARSON asked if the contract spelled out all the conditions under which the manufacturer may terminate the relationship. SEN. JERGESON said that under some of the statutes now they may terminate a dealership. He said this bill responds to a drought in an area, the cancellation of a dealership, and determining a successor. The showing of good cause is taken from the Minnesota statutes.

REP. KELLER asked how this bill compared to SEN. WILLIAM'S bill from 1985. SEN. JERGESON replied that SEN. WILLIAM'S bill was in response to the takeover of International Harvester by Tenneco.

REP. DEBRUYCKER (Roger) asked Mr. Waterman if he had seen the proposed amendments. Mr. Waterman replied that he had not. REP. DEBRUYCKER asked if the bill passed with those amendments would the bill be constitutional. Mr. Waterman read through the amendments and replied he would approve the bill with the amendments over the original form.

REP. BACHINI asked SEN. JERGESON if he had a chance to look at any of the amendments and if he could go along with any of them. SEN. JERGESON said he has been studying them for most of the day, but have some problems with the change from "good cause" to "reasonable grounds".

Closing by Sponsor:

SEN. JERGESON closed by adding that farm implement manufacturers have said that the smaller dealers have gone broke because there were too many and there was poor management. He felt that the mismanagement was at the national level and not the local level. SEN. JERGESON said this bill is to keep the manufacturers from imposing something artificial on the market. They are trying to reduce the number of dealers on some arbitrary basis rather than letting it happen because the dealer is or isn't able to respond to the market on his own.

EXECUTIVE ACTION ON HB 549

Motion: REP. BACHINI MOVED HB 549 DO PASS.

Discussion: Connie Erickson, Legislative Counsel, distributed amendments for the noxious weed bill. EXHIBIT 4. She said these amendments do not exempt the mills from I-105.

Motion/Vote: REP. BECK moved to adopt the amendments. REPS. BACHINI and REP. SCOTT voting no.

Vote: REP. PHILLIPS MADE A SUBSTITUTE MOTION THAT HB 549 BE TABLED. Motion CARRIED 12 to 4 with REPS. KELLER, MCCAFFREE, HAYNE and BECK voting no.

EXECUTIVE ACTION ON HB 612

Motion: REP. BACHINI MOVED HB 612 BE TABLED.

Discussion: Connie Erickson distributed amendments. EXHIBIT 5.

Motion/Vote: REP. BECK MOVED HB 612 BE TABLED. Voice vote was taken. Motion FAILED.

Motion/Vote REP. BACHINI MADE A SUBSTITUTE MOTION THAT HB 612 DO PASS AS AMENDED. Motion CARRIED unanimously.

Motion/Vote: REP. BARNETT MADE A SUBSTITUTE MOTION THAT HB 612 BE TABLED.

VOTE: HB 612 BE TABLED. Motion CARRIED unanimously.

Information/Discussion:

CHAIR LINDA NELSON informed the committee that executive action will be taken on SB 158 at the next meeting.

Connie Erickson told the committee that she has received

amendments that were not from anyone in the Legislature. She informed the committee she would need a request to be able to draft the amendments.

Motion/Vote: REP. BACHINI informed the committee that the sponsor of the bill asked that it BE NOT CONCURRED IN if the bill is amended.

Vote: REP. PHILLIPS MOVED TO HAVE AMENDMENTS DRAFTED. Motion CARRIED unanimously.

Information/Discussion:

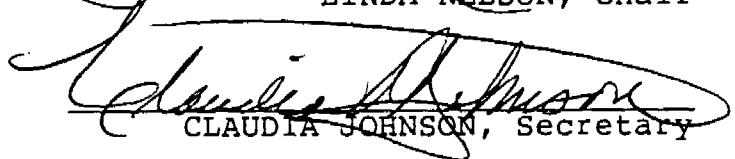
CHAIR LINDA NELSON informed the committee she had spoken with the lawyer for the McCarty Farms Case. He asked her to speak with the committee about reserving a draft request with the Legislative Council.

Motion/Vote: REP. BACHINI MOVED TO REQUEST THE COMMITTEE RESOLUTION. Motion CARRIED unanimously.

ADJOURNMENT

Adjournment: 5:30 P.M.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 2-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

**MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION**

EXHIBIT 1

DATE 2-15-91

HB SB 158

318 N. Last Chance Gulch
P.O. Box 440
Telephone 406/442-3388
Helena, Montana 59624

he advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY
FEBRUARY 15, 1991
ROOM 312-3

SENATE BILL 158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, MANAGING DIRECTOR OF THE MONTANA HARDWARE & IMPLEMENT ASSOCIATION. WE REPRESENT A NUMBER OF FARM IMPLEMENT DEALERS THROUGHOUT THE STATE. I AM HERE TODAY TO IN SUPPORT OF SENATE BILL 158.

AS WE ALL KNOW, FOR A NUMBER OF YEARS, THE AGRICULTURE INDUSTRY IN OUR STATE HAS BEEN UNDER ECONOMIC STRESS. LIKewise, THOSE MAIN STREET MERCHANTS WHO SERVE THIS INDUSTRY HAVE HAD VERY DIFFICULT ECONOMIC TIMES. WE ARE SEEING MAJOR CHANGES IN THE WAY MANUFACTURERS OF FARM IMPLEMENT EQUIPMENT SERVE AND HANDLE THEIR DEALER AGREEMENTS.

SOME OF THE CHANGES WE ARE SEEING IN THE INDUSTRY ARE:

1. THE RIGHT TO SUCCESSION BEING QUESTIONED AND, IN SOME CASES, THE DEALERSHIP BEING CANCELED WHEN THE CURRENT OWNER RETIRES OR IS DECEASED. THIS PRESENTS A MAJOR PROBLEM TO THE DEALER OR HIS FAMILY, FOR IN MOST CASES THEIR LIFE SAVINGS ARE TIED UP IN THE BUSINESS.

2. WHEN A DEALERSHIP IS TERMINATED, THEN THE QUESTION OF INVENTORY AND REPAIRS PARTS BECOMES A MAJOR ISSUE. IN MOST CASES THE DEALER HAS SPENT YEARS BUILDING THE MARKET FOR THE EQUIPMENT IN HIS AREA AND BY THE DEMANDS OF THE COMPANY, AS WELL AS PROPER SERVICE TO HIS CUSTOMERS, INVENTORIES CAN BE QUITE LARGE. WE FEEL, IF A DEALERSHIP IS CANCELED BY THE COMPANY, THEN THE DEALER SHOULD AT LEAST RECOVER HIS RAW COST FROM THE MANUFACTURER FOR INVENTORY OF EQUIPMENT AS WELL AS REPAIR PARTS, AND PAY THE FREIGHT TO RETURN THE INVENTORY.

3. MANUFACTURERS ARE DEMANDING THAT DEALERS PRODUCE A CERTAIN VOLUME EACH YEAR IN THEIR PRODUCT LINE. IF THEY DO NOT REACH THIS LEVEL OF SALES, THEN IN SOME CASES THE COMPANY VOIDS THE DEALERSHIP AGREEMENT. DEALERS OPERATING IN AREAS THAT HAVE BEEN DECLARED A DROUGHT AREA, NEED PROTECTION FROM THE MANUFACTURERS, SO THEY MAY NOT REMOVE THE DEALERSHIP AGREEMENT, UNTIL THE FARMER, RANCHER AND THE DEALERSHIP CAN RECOVER. THIS BILL ADDRESSES THIS ISSUE FAIRLY FOR BOTH THE DEALER AS WELL AS THE MANUFACTURER.

EXHIBIT 1
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PAGE 2

4. A TREND WE SEE IN THIS INDUSTRY IS. TO ESTABLISH LARGE REGIONAL DEALERS WITH A FEW BRANCH STORES IN SELECTED AREAS. THIS WILL MEAN IN MANY CASES LESS SERVICE AND MORE COSTLY SERVICE AS THE FARMER / RANCHER WILL TRAVEL GREATER DISTANCES TO OBTAIN PARTS AND REPAIRS.

THE ISSUES AND CONCERNS I HAVE DISCUSSED HAVE BEEN ADDRESSED IN THIS PROPOSED LEGISLATION.

WE ASK YOUR SUPPORT OF SENATE BILL 158.

THE JOHN DEERE COMPANY AND THEIR DEALERS HAVE SUGGESTED SOME AMENDMENTS TO THE BILL WHICH I HAVE DISCUSSED WITH THE SPONSOR, SENATOR JERGESON AND OFFER THEM FOR YOUR CONSIDERATION.

WE HAVE SEVERAL IMPLEMENT DEALERS HERE TODAY. WHO WOULD LIKE TO GIVE SOME BRIEF TESTIMONY. THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

FEB 14 '91 17:12 DEERE DM ST GOV AFF P02

PROPOSED AMENDMENTS TO SENATE BILL 158

1. Strike Section 1 (5) in its entirety (lines 7-25, page 2, and line 1, page 3).
2. Strike Section 1 (6) and replace it with the following:
"(6) 'Designated successor' means a person who is designated through a succession agreement with the grantor to succeed a retiring dealer in the dealership."
3. Strike Section 1 (8) (b) in its entirety (lines 20-23, page 3)
4. Strike Sections 2,3,4 and 5 in their entirety, and replace with the following new sections:

"Transfer. No grantor may unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership whenever the dealer to be substituted meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. If a grantor determines that a proposed transferee does not meet such requirements it shall give the dealer written notice stating the specific reasons for withholding consent."

"Withhold Consent. No grantor may unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership if the family member meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. Should a grantor determine that the designated family member is not acceptable, it shall provide the dealer with written notice of its objections and specific reasons for withholding its consent. A grantor shall have thirty days to consider a dealer's request to make a transfer to a family member. As used in this paragraph, 'family' means and includes a spouse, parents, siblings, children, and lineal descendants, including those by adoption of the dealer or principal owner of the dealership."

5. Section 8. Strike the words "three times" on line 23, page 7.



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Serving Farm, Industrial and Outdoor Power Dealers
10877 Watson Road • St. Louis, Missouri 63127-1081 • 314/821-7220



G.L. S-2910

January 25, 1991

EXHIBIT 1 GENERAL LETTER
DATE 2-15-91
HB SBL58

SUBJECT: *Massey Ferguson Case*
Re: Parts Return

FOR YOUR INFORMATION

TO: Association Managers

As you are aware, Massey Ferguson (MF) has continually refused to repurchase combine and four-wheel drive parts on termination of an MF dealer. The basis for MF's refusal to purchase parts was that there had been an assignment of all of the obligations to the Massey Combines Corporation (MCC) on May 9, 1986, and that MF has consistently relied on this assignment as a basis for not having an obligation to repurchase the combine and four-wheel drive tractor parts.

A recent United States District Court for the Western District of Missouri case gives former MF dealers encouragement in the case of Lewis G. Moore & Co. v. Massey Ferguson, Inc., cause number 89-0306-CV-W-8 (January 8, 1991). Until now, there have been no reported case decisions, as MF has settled before a decision by a court.

Moore was an MF dealer, terminated in November 1987, and returned parts pursuant to a letter received from MF. MF refused to pay for \$96,176 of repair parts which were returned to MF.

Moore filed suit for the value of the parts MF refused to repurchase. Moore subsequently sought a summary judgment under the Missouri Dealer Buy-back statute and breach of contract. The Court granted Moore a summary judgment in the amount of \$96,176, plus interest and attorney's fees.

The basis of the Court's decision was the purported transfer of MF's obligation to MCC in the May 9, 1986 assignment was not a novation (a substitution of parties) as argued by MF, and MF had the obligation to repurchase the parts.

The Court relied on Missouri statute in issuing the summary judgment. Interest was awarded as of May 9, 1988.

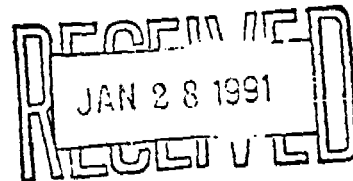
The law firm of Seigfreid, Bingham, Levy, Selzer & Gee, counsel for the Western Association, represented Moore. If you wish to receive a copy of the decision, please let Jackie Warner know and we will furnish a copy to you.

Sincerely,

William E. Galbraith
Executive Vice President

WEG:jw

cc: Board of Directors
Advisory Board



Gallatin Equipment Co.



"We would rather explain our quality, than apologize for anything less."

15 February 1991

House of Representatives
Committee on Agriculture, Livestock and Irrigation

Honorable members of the Committee. I am Duane Burkenpas - co-owner with my brother of Gallatin Equipment Co., a John Deere dealership in Belgrade, MT. We have been a dealer for thirty years, serving a seven county trade area. We have been a member of the Montana Hardware and Implement Association for that same period of time. I served on the Board of Directors for several years and was President in 1983. Today I am here representing our dealership, and speaking for Horizon Equipment Co., a John Deere dealer in Miles City, and Conrad Implement Co., a John Deere dealer in Conrad for over fifty years.

We support Senate Bill 158 presently for your review before giving to the House Floor for approval. We ask that certain amendments be considered prior to giving this Bill to the Floor, addressing the transfer or secession of farm equipment dealers. It is our feeling the wording in Sections 1, 2, 3, 4, and 5 needs amended. The recommendations are attached for your reference.

The amendments do not abolish the intent of transfer or secession of a farm equipment dealership, but does allow reasonable stability

to remain in the farm equipment business in the State of Montana. We must compare the present and future position of the farm equipment dealerships with that of other agri-business and the changes that have taken place as well as future changes yet to come. Remember the grain elevator business. Remember the railroad business. Remember the rural school statis. All this is changing. Our highway system helps lead us into change. It is as easy to travel fifty miles today as it was thirty years

to travel ten miles. The Federal Crop Reserve Program has greatly reduced the demand for farm equipment. The consolidation of farms has reduced the demand for farm equipment. The increased product reliability of farm equipment has reduced the replacement demand.

Increased technology of todays farm equipment has placed increased responsibility on the dealer. Recent findings of E.P.A. determines freon used in all air conditioning systems is highly detrimental to our atmosphere. Todays cost of Freon has increased dramatically, and will soon no longer be available. To perform repairs to an air conditoning system now, a dealer investment in excess of \$5,000. in special Freon recovery equipment is needed. We have this equipment at our dealership. Not every dealer is going to be able to continue investing in special training and special equipment to support the limited numbers of pieces of equipment sold by that dealership. This service is going to be furnished by the stronger more reliable dealerships, demanded by the consumer.

More demand is placed on the farm equipment dealer to maintain highly trained technicans to service todays equipment. The labor market has disappeared. John Deere dealers are now sending students to North Dakota State at Whapeton, North Dakota to a special Service Training Course developed by Whapeton School of Science and John Deere Company, just for the training of new Service Technicans.

I am telling you this to help you realize that not all the present farm equipment dealers can afford or will want to invest in these long term capital investments to maintain the services you expect and demand for the equipment you purchase. The total return on investment in a farm equipment dealership is no different than any

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other business today. After the investment there must be enough volume to create a profitable return. With less farms, less acres farmed, it is only reasonable that there will be less farm equipment dealers. That necessarily does not say there will be poorer dealers. That is the reverse, with fewer dealers, it will offer the opportunity for those to expand customer base, increase unit volume and justify offering the backup service and parts needed.

Recent studies conducted by our dealership in parts of our trade area, found most customers with a "rainbow yard". That means the customer is not loyal to any one brand of equipment, but purchases his needs from the dealer that has the equipment at the best price. We found customers did not purchase their dry-goods or usual supplies from their home-town, but would travel to the larger ^{dealership} ~~cities~~ in a 100 mile radius to obtain the products and services needed. That is a sad fact.

The amendments offered, will allow a continuing relationship between dealership and manufacturer, with the ultimate winner being the farmer/rancher and the State of Montana. The amendments offered will eliminate the possibilities of law suits attempting to clarify what is intended by the present definitions of successor and good cause. Nobody is a winner in most law suits except the lawyers. Many small dealership today can not afford to file a suit. Adopt the amendments as offered, and then recomend a "Do Pass" for the House membership.

Thank you for the time given me to explain and express our concerns to Senate Bill 158.

PROPOSED AMENDMENTS TO SENATE BILL 158

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1. Strike Section 1 (5) in its entirety (lines 7-25, page 2, and line 1, page 3).

2. Strike Section 1 (6) and replace it with the following:

"(6) 'Designated successor' means a person who is designated through a succession agreement with the grantor to succeed a retiring dealer in the dealership."

3. Strike Section 1 (8) (b) in its entirety (lines 20-23, page 3)

4. Strike Sections 2,3,4 and 5 in their entirety, and replace with the following new sections:

"Transfer. No grantor may unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership whenever the dealer to be substituted meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. If a grantor determines that a proposed transferee does not meet such requirements it shall give the dealer written notice stating the specific reasons for withholding consent."

"Withhold Consent. No grantor may unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership if the family member meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. Should a grantor determine that the designated family member is not acceptable, it shall provide the dealer with written notice of its objections and specific reasons for withholding its consent. A grantor shall have thirty days to consider a dealer's request to make a transfer to a family member. As used in this paragraph, 'family' means and includes a spouse, parents, siblings, children, and lineal descendants, including those by adoption of the dealer or principal owner of the dealership."

5. Section 8. Strike the words "three times" on line 23, page 7.

I am Ronald F. Waterman and I appear on behalf of Case Corporation., Case is a manufacturer of farm equipment with a network of dealers in Montana as well as the other 49 states. I appear today in opposition to Senate Bill 158 and urge this committee to not pass this legislation.

This bill responds to the shrinking population in rural areas. It does so by attempting to keep one and only one type of business present in those counties. It will not reverse this problem.

Senate Bill 158 states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", a showing the succession would be detrimental to the public interest or to the representation of the manufacturer. This standard is vague and unenforceable, it fails to consider the interests of the manufacturer and essentially assures that every rejection will be challenged.

It is basic contract law that there must be two parties willing to consent to do business with each other before a contract can be created. This bill alters that concept and forces one party, a manufacturer, to accept another as a dealer although the manufacturer does not know and has not willingly agreed to do business with that

successor dealer. Interestingly, Senate Bill 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. What is true for the family members is likewise true to the manufacturer.

Senate Bill 158 likewise sets up an administration procedure with court review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership.

Senate Bill 158 prevents termination for a natural disaster or for circumstances beyond the dealer's control. Again the language is vague. Moreover, the prohibition will always be invoked. I cannot think of any unsuccessful dealer who would not blame the weather or something beyond his control to prevent termination. This section says that if a dealer is a poor salesman and if other dealers are more aggressive and successful, nevertheless the manufacturer is stuck with that dealer,

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because after all, his inability to sell is beyond his control as he competes against other more successful salesmen.

Finally, I must advise that this bill is probably unconstitutional. It seeks to impair the obligations and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. I also question the validity of imposing both a penalty, making the violation of the statute quasi-criminal in nature and also imposing the prospect of treble damages in the event there is a termination despite the terms of this section.

For these reasons given above, I respectfully request that this bill receive a do not pass recommendation from this committee.

1534R

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agiculture COMMITTEE BILL NO. SB 158
DATE 2-15-91 SPONSOR(S) Sen Jergerson
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Quill & Nally</u> <u>Redstone Mt.</u>	<u>Nash Bros</u>	<u>✓</u>	
<u>Ken Manson</u>	<u>Manson Equip</u>	<u>✓</u>	
<u>Sydney Coburn</u> <u>Billings Mont</u>	<u>Pope Equip & MHA</u>	<u>✓</u>	
<u>Conn. Hansen</u> <u>Wolf Point, MT</u>	<u>Hansen Implement Co</u>	<u>✓</u>	
<u>Bob Stephens</u>	<u>Mt. Grain Growers Assn</u>	<u>✓</u>	
<u>George Paul</u>	<u>MT Farmers Union</u>	<u>✓</u>	
<u>Bartholomew A. Cray</u>	<u>Zone Dist #20</u>	<u>✓</u>	
<u>Dennis H. Kirk</u>	<u>South Dist 10</u>	<u>✓</u>	
<u>Ra Watman</u>	<u>Care</u>		<u>✓</u>
<u>Kay Noranberg</u>	<u>MT WIFE</u>	<u>✓</u>	
<u>Charles Brooks</u>	<u>MT Hwd & Imps</u>	<u>✓</u>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Vote: HB 674 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 771

Motion: REP. PHILLIPS MOVED HB 771 DO PASS.

Discussion: REP. PHILLIPS moved to adopt the amendment. EXHIBIT 1 Connie Erickson discussed the amendment. She said the issue regarding this bill limits the minimum and maximum set on the bond. On page 15, lines 20 - 22 (this is language that was stricken from the bill), reads "the minimum amount of bond required by any commodity dealers \$20,000, and the maximum is prescribed in 80-4-405 provides the maximum amount of million dollars for a commodity dealers bond". That section of the law was not amended in this bill. She was concerned that by simply striking those words on the maximum as described in 80-4-405 actually removes the maximum amount of the bond, because the language in 80-4-405 was not changed at all. After reading it a second time, Ms. Erickson thought it removed the minimum amount instead of the maximum amount. She said if the committee wanted to leave the language in, the bill would have to be amended to amend the other section or leave the maximum amount in and remove the language.

Motion/Vote: REP. ELLIOTT made a substitute motion to suspend action on HB 771 until Ms. Erickson can finish the amendments. Voice vote was taken. Motion CARRIED unanimously.

Vote: MOTION ON HB 771 WAS SUSPENDED.

EXECUTIVE ACTION ON SB 158

Motion: REP. BACHINI MOVED SB 158 BE CONCURRED IN.

Discussion: REP. BACHINI moved the John Deere amendments for discussion purposes. REP. BACHINI spoke to his motion. He said they do just the opposite of what the implement dealers are asking for. He hoped the committee would resist the amendments. He said this is one of the ways to strip the bill.

Connie Erickson explained the amendment. On page 2, Ron Waterman, representing John Deere, wanted to strike subsection 5 in its entirety which says a designated family member. On page 3, strike subsection 6, which is the section which defines a designated successor. She said Mr. Waterman offered language in place of subsection 6, but the language he used for designated successor and in the rest of the amendments did not use designated successor. Ms. Erickson said it is not defined in the bill if it is not going to be used. The amendment Ms. Erickson drafted does not include a new definition of designated successor. The other amendments Mr. Waterman asked for was to strike subsection 8 on page 3, the new language relating to good

cause. Mr. Waterman asked to strike beginning in page 4, sections 2, 3, 4 and 5 in their entirety. That is mainly the new portion of the bill that relate to the procedure for passing on a dealership to a designated successor or family member. Mr. Waterman's language they offered to replace these sections with; is that a grantor could not withhold consent on the transfer of a dealership to a proposed successor or a family member. They could not withhold consent if the person proposed to be successor meets the requirements they set up, which are business qualifications, financial qualifications, character experience. This is also the same for a family member. Mr. Waterman also provided in the portion where a family member could succeed by including a 30 day provision that says a "grantor shall have 30 days to consider a dealers request to make a transfer to a family member, but there was no similar time request for a transfer request for a successor.

REP. DEBRUYCKER (Roger) wanted section 8 left out, but leave the rest in.

REP. ELLIOTT said he had spoke with SEN. JERGESON before the committee hearing and it was his feeling and also the feeling of several republican senators that the Mr. Waterman amendment would be rejected by the Senate.

REP. BARNETT spoke in support of the amendment. He said in the testimony on Friday, the membership was not informed of the amendments addressed until the second reading in the Senate. He than said he would have to rise in opposition because of the concern of a constituent in his district. CHAIR LINDA NELSON asked REP. BARNETT if he meant he was in support of the amendments. REP. BARNETT said he is.

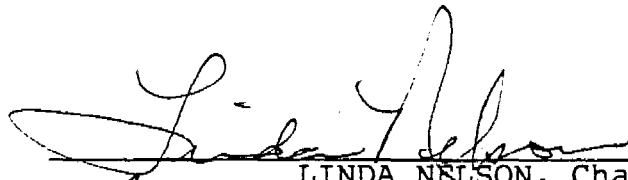
REP. BECK asked Chuck Brooke, Hardware/Implement representative, what he thought of the amendments. Mr. Brooke thought the amendments really stripped the bill. Mr. Brooke said what happened, the association was very interested in moving the returned inventory from 85% to 100% plus freight. He said SEN. JERGESON had a bill and was combined to make one bill. He said it is no secret that Mr. Waterman is going to close some of the smaller dealerships in this state. The larger dealers will end up with this territory. He said it is his duty to protect that dealer out there that will lose his 15, 20, or 30 years of effort in building the line of merchandise so he can recover his life time savings, which will be tied up in the business when he is shut down. He said this should be a major concern of everyone, and it is no secret that the farmer/rancher will pay the price by having to travel further to get parts and service.

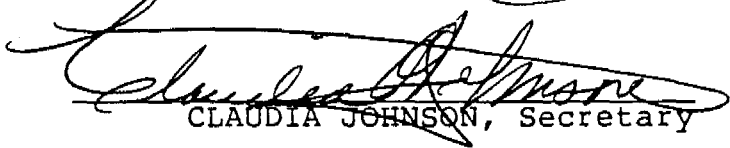
Motion/Vote: REP. ELLIOTT made a substitute motion to strike the John Deere amendment. Voice vote was taken. The motion CARRIED 11 to 5 with REP. PHILLIPS, REP. KELLER, REP. DEBRUYCKER (Roger), CHAIR LINDA NELSON and REP. BARNETT voting no.

Vote: SB 158 BE CONCURRED IN. Motion CARRIED 9 to 7 with REP. HAYNE, REP. HANSON, REP. BARNETT, REP. LARSON, REP. DEBRUYCKER (Roger), REP. KELLER and REP. PHILLIPS voting no.

ADJOURNMENT

Adjournment: 4:45 p.m.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 2-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 158 (third reading copy -- blue) be concurred in .

Signed: 
Linda Nelson, Chairman

Carried by: Rep. Linda Nelson